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MICROSOFT CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

EEE BUSINESS INC., a California
corporation, d/b/a EBUSZONE.COM and
EBZ EBZ; MING NI SHANG; LIFENG
WANG, a/k/a ALICE WANG; NANCY
LINKER; and JOHN DOES 1-5,

Defendants.

No. 3:07-cv-01839-JSW

**AGREED REQUEST TO
RESCHEDULE CASE
MANAGEMENT CONFERENCE
AND ORDER THEREON**

A Case Management Conference in this matter presently is on this Court's calendar for Friday, July 13, 2007. For the following reasons plaintiff Microsoft Corporation ("Microsoft") respectfully requests that the conference be rescheduled. The single defendant who has answered Microsoft's complaint does not oppose Microsoft's request.

BACKGROUND

Microsoft filed this action on April 2, 2007. Defendant EEE Business Inc. (“EEE”) was served with the Summons, Complaint (Dkt. # 1), and Order Setting Initial Case Management Conference and ADR Deadlines (“Initial Scheduling Order”) (Dkt. # 2) on May 1, 2007. *See* Proof of Service (Dkt. # 15). EEE’s answer was due May 21, 2007. As of the filing of this Request, EEE has not answered or otherwise responded to Microsoft’s complaint.

Defendants Ming Ni Shang (“Shang”) and Lifeng (Alice) Wang (“Wang”) were served with the Summons, Complaint, and Initial Scheduling Order on May 30, 2007. *See* Proofs of Service (Dkt. ## 16, 17). Shang’s answer and Wang’s answer were due on June 19, 2007. Neither Shang nor Wang timely answered or otherwise responded to Microsoft’s complaint.

Pursuant to this Court’s Initial Scheduling Order, June 21, 2007 was the deadline to meet and confer regarding initial disclosures, early settlement, ADR process selection, and discovery plan, and was also the deadline for filing a Joint ADR Certification with Stipulation to ADR Process or Notice of Need for ADR Phone Conference. Despite Microsoft’s counsel’s attempts to contact EEE, Shang, and Wang (collectively, the “Served Defendants”), Microsoft and the Served Defendants were unable to confer as ordered by this Court. Microsoft therefore filed a Status Report in lieu of the Joint ADR Certification on June 21, 2007. *See* Status Report Regarding Fed. R. Civ. P. 26(f) Conference and Civil L.R. 16-8 ADR Certification and Stipulation (Dkt. # 18).

As noted above, a Case Management Conference in this matter presently is on this Court’s calendar for Friday, July 13, 2007. The Initial Scheduling Order requires that any request to reschedule that conference be made in writing at least ten days prior to the conference. The Initial Scheduling Order also requires that the parties’ Fed. R. Civ. P. 26(f) Report be filed by July 5, 2007, and that a Joint Case Management Statement be filed no later than five court days prior to the Case Management Conference.

The morning of Monday, July 2, 2007, Jeremy Roller, counsel for Microsoft in this matter, learned that Wang had filed an answer to Microsoft’s complaint on Friday, June 29, 2007. *See* Lifeng (Alice) Wang’s Answer to Microsoft Corporation’s Complaint (Dkt. # 20). Upon learning that Wang had answered Microsoft’s complaint, Microsoft’s counsel immediately

1 telephoned Wang's counsel at the telephone number listed on her answer. Microsoft's counsel
2 left a message for Wang's counsel, and asked that his telephone call be returned to discuss this
3 case and the various deadlines set forth in the Initial Scheduling Order. Microsoft's counsel again
4 telephoned Wang's counsel the morning of Tuesday, July 3, 2007, and asked that his telephone
5 call be returned as soon as possible. Later that morning Wang's counsel, James Chai, returned
6 Microsoft's counsel's telephone call. Microsoft's counsel described the initial deadlines that have
7 passed and those that are imminent, and suggested that the parties request that the Case
8 Management Conference be rescheduled. Wang's counsel agreed that rescheduling the Case
9 Management Conference would be appropriate, and stated that Microsoft could represent Wang's
10 non-opposition to the request. Microsoft and Wang are scheduled to meet and confer regarding
11 initial disclosures, early settlement, ADR process selection, and discovery plan within the next
12 week.

13 Because Microsoft was unable to confer with Wang's counsel until this morning and
14 because EEE and Shang have not yet answered Microsoft's complaint, Microsoft has been unable
15 to file the ADR Certification with Stipulation to ADR Process or Notice of Need for ADR Phone
16 Conference. Additionally, the Served Defendants have, as of the filing of this Request, been
17 unavailable to meet and confer regarding initial disclosures, to participate in filing the Fed. R.
18 Civ. P. 26(f) Report, or to participate in submitting a Joint Case Management Statement as
19 required by the Federal Rules of Civil Procedure and this Court's Initial Scheduling Order. As
20 stated above, now that Wang has answered Microsoft's complaint and counsel for Wang and
21 Microsoft have preliminarily conferred, Microsoft and Wang will promptly meet and confer as
22 required by the Federal Rules of Civil Procedure and this Court.

23 REQUEST

24 Given the foregoing facts, Microsoft respectfully submits that there is good cause to re-
25 schedule the Initial Case Management Conference. That conference will be far more productive
26 if, prior to it, Microsoft and the Served Defendants (or, at a minimum, Wang) are able to meet
27 and confer regarding initial disclosures and other matters and to file the Fed. R. Civ. P. 26(f)
28 Report and Joint Case Management Statement. Microsoft therefore requests that the Initial Case

Management Conference be rescheduled for the third week of August, 2007, or such other time as convenient for the Court.

Respectfully submitted this 3rd day of July, 2007.

/s/ Esha Bandyopadhyay

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/s/ Jeremy E. Roller

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The Case Management Conference is RESET for August 24, 2007 at 1:30 p.m.

Dated: July 5, 2007